IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.550 OF 1993

1. Shrikrishan Jindal)
)
2. Ajay Jindal)
)
3. Vijay Jindal)
)
4. Sanjay Jindal)
)
Flat No.22, Peacock Palace, 69)
Warden Road, Bombay-26.)..Petitioner.

V/s.

1. S.K.Laul)
)
2. S.C.Tiwari)
)
3. C.M. Batgeri)
All members of the Appropriate)
authority constituted under)
Chapter XX-C of the Income Tax)
Act, 1961 having their office at)
Mittal Court, A-Wing, 3rd floor)
Nariman Point, Bombay-400 021.)
)
4. Mrs.Mathradevi Sadhuram Talreja)
Narayan Niwas, Parmanand Dham,)
Galli No.13, Near Khar Telephone)
Exchange, Khar (West), Bombay.)
)
5. Union of India)..Respondents.

Mr.J.D. Mistry, Advocate with Jitendra Jain i/b. DSK Legal for petitioners.

Mr.R.Ashokan for respondents.

CORAM : F.I.REBELLO AND
J.P.DEVADHAR, JJ.

DATED : 3RD SEPTEMBER, 2007.

ORAL JUDGMENT (PER J.P.DEVADHAR, J.)

1. This petition is filed to challenge the order dated 25/2/1993 passed by the appropriate authority under section 269 UD (1) of the Income Tax Act, 1961 ('the Act' for short).

2. The facts relevant for the present petition are that the by an agreement dated 30th May, 1987 the petitioners agreed to purchase from the respondent No.4 Flat No.111, situated at Warden Road, Mumbai - 400 026 for a consideration of Rs.40 lakhs. On an application made in Form 37I, the appropriate authority under Income Tax Act passed a purchase order on 20th August, 1987 under section 269 UD(1) of the Act without giving an opportunity of hearing to the petitioners.

3. Aggrieved by the said order, the petitioners filed Writ Petition No.2891 of 1987 in this Court. By an order dated 17th December, 1992 the said petition was allowed by setting aside the order dated 20th August, 1987 and the appropriate authority was directed to decide the issue afresh in the light of the Judgment of the Apex Court in the case of **C.B.Gautam V/s. Union of India** reported in **199 I.T.R. 530**.

4. Thereafter, by a show cause notice dated 30th December, 1992 the petitioners were called upon to show cause as to why purchase order should not be made under section 269 UD(1) of the Act. In the said show cause notice, the appropriate authority referred to five sale instances noticed at Warden Road, between January, 1987 and April, 1987.

5. By its reply dated 21/1/1993 the petitioners objected to the flat being purchased under section 269 UD(1) of the Act on various grounds set out therein. In the said reply, it was inter alia contended that there was no under valuation and in support of that contention the petitioners relied upon sale of Flat No.5, Cote D. Azur Building, Warden Road, Bombay admeasuring 2077 Sq.ft. for Rs.38,00,000/- wherein N.O.C. has been granted on 1/9/1987. By the said reply the petitioners called upon the appropriate authority to furnish materials in respect of the sale instances referred in the show cause notice.

6. However, without furnishing the documents relating to the sale instances referred to in the show cause notice, the impugned purchase order was passed on 25/2/1993. Challenging the said order the present petition is filed. On 7/7/1993 the Writ Petition was admitted and interim order was granted thereby

restraining the respondents from taking any further steps in implementation of the impugned order.

7. Mr.Mistry learned counsel appearing on behalf of the petitioners submitted that the impugned order is liable to be quashed and set aside because, firstly, no fair market value of the flat has been determined so as to arrive at a conclusion that in the present case the under valuation was to the extent of 15%. Secondly, the advantages / disadvantages of the flat in question vis a vis the sale instances referred to in the impugned order have not been considered. Thirdly, neither a copy nor inspection of the materials relating to sale instances has been provided even though specifically asked and fourthly the sale instance pointed out by the Petitioners have not been considered in the impugned order. In support of the above contentions Mr.Mistry relied upon a decision of this Court in the case of Vimal Agarwal V/s. A.A. & Others reported in 210 ITR 16.

8. Mr.Ashokan, learned counsel appearing on behalf of the revenue submitted that prior to the decision of this court in the case of Vimal Agarwal (supra), it was not the practice adopted by the appropriate authority to determine the fair market value at any point of time. He submitted that the

grievance of the petitioners that particulars of the sale instances relied upon by the revenue have not been given to the petitioners has no merit, because it was open to the petitioners to visit the office of the appropriate authority and take inspection of the documents. In the light of the sale instances referred to in the impugned order, Mr.Ashokan submitted that the petition is liable to be dismissed.

9. On consideration of the rival submissions, we are clearly of the opinion that the impugned order suffers from serious infirmities and hence cannot be sustained. As held by the Apex Court in the case of C.B. Gautam (supra) the provisions of Chapter XX-C can be resorted to only when there is significant under valuation in the agreement of sale with a view to evade tax. As held by this Court in the case of Vimal Agarwal (supra) in order to draw inference of under-valuation, it is necessary to determine first the fair market value of the property in question in the light of all the attending circumstances. Without doing so, it is not only difficult but impossible to say that the apparent consideration is lower than the fair market value by 15%. In the present case, admittedly the fair market value of the flat in question has not been determined as a result whereof it could not be said that there is undervaluation to the extent of 15%.

10. Apart from the above, in respect of the sale instances referred to in the show cause notice, the petitioners had specifically sought inspection of the documents but the same was given. Failure to furnish relevant particulars of the sale instances relief upon by the revenue constitutes breach of principles of natural justice. Moreover, the impugned order has been passed without considering merits or demerits of the sale instance pointed out by the petitioners.

11. In these circumstances, we have no option but to quash and set aside the impugned order passed under Section 269 UD(1) of the Act.

12. Accordingly, rule is made absolute with no order as to costs.

(F.I.REBELL0, J.)

(J.P.DEVADHAR, J.)